

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-370V

April 17, 2007

Not to be Published

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EDUARDO ALVAREZ, \*

Petitioner, \*

v. \* Entitlement; MMR vaccine

SECRETARY OF THE DEPARTMENT OF \* and sarcoidosis; no proof of

HEALTH AND HUMAN SERVICES, \* causation

Respondent. \*

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Thomas P. Gallagher, Somers Point, NJ, for petitioner.

Nathaniel J. McGovern, Washington, DC, for respondent.

**MILLMAN, Special Master**

## DECISION<sup>1</sup>

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

On May 8, 2006, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10, et seq., alleging that MMR vaccine on May 20, 2003 caused him sarcoidosis.<sup>2</sup>

During a status conference held on February 27, 2007, petitioner's counsel stated that his client was dismissing his petition. He filed a motion to dismiss on April 16, 2007, stating he could not find an expert to support petitioner's allegations. Petitioner requested judgment be entered on the existing record.

### **FACTS**

Petitioner was born on May 17, 1973.

He received MMR vaccine on May 20, 2003. Med. recs. at Ex. 1, p. 1.

On June 16, 2003, he had an x-ray done of his right ankle because of diffuse soft tissue swelling. Med. recs. at Ex. 4, p. 80.

On February 25, 2004, petitioner saw Dr. Stephen J. Moses. He had left foot swelling about six months previously (which would be August 2003). This soon spread to the right foot. The symptoms lasted one month and then improved. In the prior two months, petitioner's elbows, fingers, knees, and feet hurt. He had low back pain for one month and transient blurring of the vision in his right eye for the prior few months. Med. recs. at Ex. 3, p. 5.

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<sup>2</sup> Sarcoidosis is "a chronic, progressive, systemic granulomatous reticulosis of unknown etiology, characterized by hard tubercles ... in almost any organ or tissue, including the skin, lungs, lymph nodes, liver, spleen, eyes, and small bones of the hands and feet." Dorland's Illustrated Medical Dictionary, 30<sup>th</sup> ed. (2003) at 1656.

On May 6, 2004, petitioner saw Dr. Howard L. Quentzel, an infectious diseases specialist. He had ankle pain and swelling about nine months previously (which would be September 2003). His ANA was negative. Med. recs. at Ex. 5, pp. 104, 105.

On April 7, 2004, petitioner went to The Griffin Hospital where he saw Dr. Ihor N. Ponomarenko. Petitioner had nodules about three months previously. Med. recs. at Ex. 6, p. 120.

On March 17, 2005, petitioner saw Dr. Kenneth J. Doubler. He gave a history that in July 2003, he had swelling of his left ankle and pain. He had non-necrotizing granulomas consistent with sarcoid. His abnormal liver function tests were related to granulomatous hepatitis, secondary to sarcoidosis. Med. recs. at Ex. 5, p. 102.

### **DISCUSSION**

To satisfy his burden of proving causation in fact, petitioner must offer "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Secretary of HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005).

In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]" the logical sequence being supported by "reputable medical or scientific explanation[.]" *i.e.*, "evidence in the form of scientific studies or expert medical testimony[.]"

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6<sup>th</sup> Cir. 1983), cert. denied, 469 U.S. 817 (1984).

Petitioner must show not only that but for MMR vaccine, he would not have had sarcoidosis, but also that the vaccine was a substantial factor in bringing about his sarcoidosis. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Petitioner has failed to provide medical expert testimony in support of his allegation.

Petitioner has failed to prove a prima facie case of causation in fact. Moreover, petitioner has requested that the undersigned dismiss this petition.

### **CONCLUSION**

Petitioner's petition is dismissed with prejudice. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.<sup>3</sup>

**IT IS SO ORDERED.**

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DATE

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Laura D. Millman  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.